

Bingaman	Feinstein	Miller
Bond	Fitzgerald	Murkowski
Boxer	Frist	Murray
Breaux	Graham	Nelson (FL)
Brownback	Gramm	Nelson (NE)
Bunning	Grassley	Nickles
Burns	Gregg	Reed
Byrd	Hagel	Reid
Campbell	Harkin	Roberts
Cantwell	Hatch	Rockefeller
Carnahan	Helms	Santorum
Carper	Hollings	Sarbanes
Chafee	Hutchison	Schumer
Cleland	Inhofe	Shelby
Clinton	Inouye	Smith (NH)
Cochran	Jeffords	Smith (OR)
Collins	Johnson	Snowe
Conrad	Kennedy	Specter
Corzine	Kerry	Stabenow
Craig	Kohl	Stevens
Crapo	Kyl	Thomas
Daschle	Landrieu	Thompson
Dayton	Leahy	Thurmond
DeWine	Levin	Voinovich
Dodd	Lieberman	Warner
Domenici	Lincoln	Wellstone
Dorgan	Lott	Wyden
Durbin	Lugar	
Edwards	McConnell	
Ensign	Mikulski	

NAYS—1

Feingold

NOT VOTING—6

Allard	Hutchinson	Sessions
Enzi	McCain	Torricelli

The conference report was agreed to.

Mr. DASCHLE. Mr. President, I move to reconsider the vote.

Mr. INOUE. I move to lay that motion on the table.

The motion to table was agreed to.

ORDER OF PROCEDURE

Mr. DASCHLE. Mr. President, I know the distinguished Republican leader wishes to speak. I ask unanimous consent that he be accorded whatever time required. I know Senator MIKULSKI has an interest in speaking for 5 minutes following the distinguished Republican leader. I ask unanimous consent that request be accommodated as well.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Republican leader is recognized.

UNANIMOUS CONSENT REQUEST—
SHEDD NOMINATION

Mr. LOTT. Mr. President, last week, the Judiciary Committee pulled from their agenda the pending nomination of Judge Dennis Shedd to fill a seat on the 4th circuit court of appeals. That was contrary to all of the understandings as to what would happen with regard to that nominee. I think various Members on the judiciary committee on several occasions had been assured he would be given a vote. I think there is no question that Senator THURMOND had been under the impression there would be a vote on Shedd's nomination this year. Yet the nomination was removed from the calendar and, therefore, not even considered by the committee. A vote was not taken, and I presume it was blocked procedurally because there would have been enough votes in the Committee to actually report Shedd's nomination to the full Senate had there been a vote.

I understand that moving to the executive calendar is traditionally a prerogative of the Majority Leader. However, there has been an extraordinary and unprecedented violation of Senate rules and tradition in the manner in which Judge Dennis Shedd's nomination was considered in the Judiciary Committee. I also believe that the manner in which Senator THURMOND was led on regarding Judge Shedd's nomination constituted a slight of Senator THURMOND during the final days of his long and distinguished Senate career. I remind Senators that we depend very heavily around here on comity and trust to do the vast majority of our business on behalf of the American people. When that trust is violated or misused it is hard to conduct business as usual.

Mr. President, Dennis Shedd's nomination was finally put on the Judiciary Committee's agenda way back on Sept. 19, but was held over to the next mark-up which as it turned out was last Tuesday, October 8th. It is also my understanding that the normal practice is that when Senators in the Committee hold legislation and nominations over at a mark-up, the tradition and practice has always been that the items held over are placed on the very next mark-up.

In this instance, the October 8th mark-up was actually postponed from the previous Thursday, October 3rd, so that Chairman LEAHY could concentrate on passing the Department of Justice (DOJ) Re-authorization Conference Report. During the vote to invoke cloture on that bill, it is my understanding that Senator THURMOND was once again assured by Senator LEAHY that Judge Shedd would be on the mark-up on October 8th.

Unfortunately, that assurance as well as the practices and traditions of the Committee were violated last week because Judge Dennis Shedd's nomination was pulled from the committee's agenda—preventing the Committee from reporting him out to the full Senate. However, breeches in decorum regarding Judge Shedd and Senator THURMOND predate last week.

On July 31st, Chairman LEAHY publicly promised Senator THURMOND at a committee meeting that Judge Shedd would be voted on this year. When Shedd wasn't on the August 1st mark-up, Senator LEAHY assured Senator THURMOND's Chief of Staff that Shedd would be voted on immediately after the August recess. When Shedd was not on the agenda for the first mark-up after the Senate returned in September—which was Sept. 5th—Senator THURMOND then was assured that Dennis Shedd would be on the next mark-up on Sept. 19th.

While Shedd was actually put on that mark-up on Sept. 19th, he was held over to the next mark-up—which is the right of Senators in the Committee to do. And then, as I said previously, contrary to tradition and practice, Shedd was kept off the agenda for the last mark-up of the year by Senator LEAHY.

Mr. President, there is no doubt about Judge Shedd's qualifications. He has strong bipartisan support. One of his most ardent supporters is the distinguished Democrat Senator from South Carolina, Senator HOLLINGS. The ABA—the "Gold Standard"—so often cited by Senator LEAHY—gave Judge Shedd a "Well Qualified" rating, its highest rating. So, it is not Judge Shedd's qualifications which are standing in the way.

He was appointed by President George H.W. Bush to the United States District Court for South Carolina in 1990, and has now served as a federal jurist for more than a decade—following nearly twenty previous years of public service and legal practice. In addition to his service on the District Court, he has sat by designation on the Fourth Circuit Court of Appeals on several occasions. Judge Shedd also has served on the Judicial Conference Committee of the Judicial Branch and its Subcommittee on Judicial Independence.

From 1978 through 1988, Judge Shedd served in a number of different capacities in the United States Senate, including Counsel to the President Pro Tempore and Chief Counsel and Staff Director for the Senate Judiciary Committee when Senator THURMOND was the Chairman.

Judge Shedd would bring unmatched experience to the Fourth Circuit. He has handled more than 4,000 civil cases since taking the bench and over 900 criminal matters. In fact, no judge currently sitting on the Fourth Circuit has as much federal trial experience as Judge Shedd, and none can match his ten years of experience in the legislative branch.

Mr. President, Dennis Shedd's record demonstrates that he is a mainstream judge with a low reversal rate. In the more than 5,000 cases Judge Shedd has handled during his twelve years on the bench, he has been reversed fewer than 40 times (less than one percent). So, it should be clear that Judge Shedd is the victim of a deliberate, calculated, attempt by outside groups to embarrass one of President Bush's nominees and not any deficiency in his professional training or temperament.

But Judge Shedd is not the only victim here. This is also an affront to Senator THURMOND in his final days as a Senator. We owe it to Senator THURMOND, as a sign of our respect and admiration for his distinguished service, to vote on the nomination of his former staff director before Senator THURMOND's career comes to an end—an action the Senator feels that Senator LEAHY gave him his word he would do.

Mr. President, the rules of the Senate provide a motion to discharge a nomination. I want to do that. But I am under no illusion that I would be allowed to make that motion and have it succeed under any circumstances. That has been tried on the other side of the aisle when I was majority leader, and I know that it would be interpreted as a